

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Numbering Resource Optimization)	CC Docket No. 99-200
)	
Implementation of the Local)	CC Docket No. 96-98
Competition Provisions of the)	
<u>Telecommunications Act of 1996</u>)	

To The Commission:

COMMENTS OF THE ALLIED NATIONAL PAGING ASSOCIATION, AMERICAN
ASSOCIATION OF PAGING CARRIERS, ARCH WIRELESS OPERATING CO., INC,
METROCALL HOLDINGS, INC., AND WEBLINK WIRELESS I, L.P. IN RESPONSE TO
THE CALIFORNIA PUBLIC UTILITIES COMMISSION PETITION FOR AUTHORITY TO
IMPLEMENT SPECIALIZED OVERLAY AREA CODES

I. INTRODUCTION

The Allied National Paging Association, the American Association of Paging Carriers, Arch Wireless Operating Company, Inc., Metrocall Holdings, Inc. and Weblink Wireless I, L.P. (the “Joint Paging Commenters”)¹, who comprise a representative cross-section of the paging/messaging industry, respectfully submit these comments in response to the California Public Utilities Commission’s (the “CPUC”) Petition for Authority to Implement Specialized Overlay Area Codes dated October 6, 2003 (the “SO Petition”).²

¹ The Allied National Paging Association and the American Association of Paging Carriers are trade associations that represent CMRS paging carriers operating national, regional and local systems. Arch Wireless Operating Company, Inc., Metrocall Holdings, Inc., and Weblink Wireless I, L.P. are three of the largest CMRS paging carriers in the country.

² Petition of the California Public Utilities Commission and of the People of the State of California for Authority to Implement Technology-Specific Overlay Area Codes (filed October 6, 2002) (“SO Petition”).

As an initial matter, the Joint Paging Commenters note that they do not, as a matter of principle, oppose the concept of an all-services specialized overlay (“SO”) provided that the SO does not impose undue burdens on consumers or carriers, does not involve the takeback of numbers and is otherwise non-discriminatory as to any particular industry segment. The SO Petition, however, represents a misguided and potentially disastrous variant of the concept outlined in the FCC’s Third Report and Order³ and should accordingly be denied by this Commission.

Even in the most generous light, the SO Petition is not actually a form of area code relief since it is not “limited to areas in which a state has properly determined that area code relief is needed”.⁴ Indeed, the CPUC staff explicitly found that the SO would not provide relief to either the 310 or the 909 NPAs which are by far the two NPAs in California that are most in need of relief. Instead, the SO Petition is apparently premised on the assumption that superimposing a new NPA over each of the southern and northern sections of the state will somehow materially extend the lives of all 25 underlying NPAs in California. (See Section II.1, *infra*.)

The SO Petition, however, does not set forth any factual data to support this assumption. In fact, the CPUC concedes that it does not know the current demand for the type of numbers it seeks to place in the SO nor does it have any way to project the future demand. Thus, there is no way of determining what effect, if any, the SOs would have on the underlying NPAs nor is there any way to determine how many numbers in the new SOs would ever be used. (See Section II.2, *infra*.)

³ See *Numbering Resource Optimization*, 17 FCC Rcd 252, 282-94, ¶¶ 67-94 (2001) (“Third Report and Order”).

⁴ Third Report and Order at ¶80.

In addition, the SO Petition does not even begin to adequately address the criteria set out by the FCC for determining when a specialized overlay might otherwise be appropriate. For example, the SO Petition purports to impose, among other things, a permanent SO, takebacks, and a permanent waiver of 10-digit dialing. (See Section II.3, *infra*.)

Finally, and perhaps most importantly from the perspective of the Joint Paging Commenters, the SO Petition inappropriately, and without explanation, singles out one part of the wireless industry – the paging industry – for inclusion in the SO. Paging numbers are neither “transparent” nor “non-geographic”, and paging services are not functionally or operationally similar to the other services potentially subject to the SO. In addition, the SO Petition essentially disregards the practical consequences of including non-pooling carriers in SOs that cover 10-15 NPAs. In brief, the SO Petition wholly fails to address the discriminatory and competitive consequences of imposing this type of burden on the paging/messaging industry sector which continues to provide *vital, low-cost, reliable telecommunications services* to millions of public safety personnel and ordinary citizens throughout the country, and in the State of California in particular. (See Section II.4, *infra*.)

For the reasons noted above and discussed more thoroughly below, the Joint Paging Commenters submit that the SO Petition should be denied.

II. COMMENTS

1. The SO Petition is Not a Form of Area Code Relief.

The FCC's admonition with regard to granting state commissions delegated authority to implement specialized overlays is clear:

...any delegated authority granted to state commissions to implement SOs will be limited to areas in which a state has properly determined that area code relief is needed.⁵

No such showing has been made by the CPUC in this instance. In fact, the SO Petition fails to identify which, if any, of the 25 underlying NPAs in the State would experience area code relief as a result of its request. Instead, the SO Petition seems to rest on the conclusory (and unsupported) statement that “[i]n order to optimize telephone number usage and extend the life of as many area codes as possible, the CPUC proposes to implement two SOs that would cover the entire state of California.”⁶ It is difficult to imagine how such a statement satisfies the Commission's requirement that state commissions limit SOs to areas which are in actual need of relief.⁷

The failure of the SO Petition to address area code relief for the 310 or 909 NPAs, which are by far the NPAs that most need area code relief in the state, is particularly striking, as explicitly recognized by the CPUC's Telecommunications and Legal Divisions in their report to the CPUC Commissioners:

⁵ *Id.*

⁶ SO Petition at 4.

⁷ See Third Report and Order at ¶ 85. The Joint Paging Commenters note that the CPUC's initial petition to implement SOs filed in September 2002 was at least focused on bringing relief to the 310 and the 909 NPAs which were (and still are) the two NPAs in the state that face the most dire numbering situation. See Petition of the California Public Utilities Commission and of the People of the State of California for Authority to Implement Technology-Specific Overlay Area Codes and Request for Expedited Treatment at 4-6 (filed September 27, 2002) (“*Initial CPUC Petition*”).

The SOs [as proposed in the SO Petition] will not save the 310 or 909 area codes from an area code change because

- No numbers will be reclaimed from these two area codes for the SO;
- The FCC may not rule on the petition before these area codes are exhausted.⁸

Thus, the ostensible justification for even considering an SO, i.e., its ability to provide area code relief where needed, is simply nonexistent in this instance.

2. There Is No Factual Basis to Support the SO Petition

The SO Petition concedes that neither the CPUC, nor the affected industries, know how many numbers which potentially would fall within the SOs are currently being used, what the current level of demand for those numbers is, or what the future demand for these numbers might be.⁹ In brief, the CPUC does not, and cannot, know what effect, if any, the proposed SO would have on the underlying NPAs. By extension, the CPUC does not know, nor can it know, whether the numbers assigned to the SOs would be exhausted in 6 months, 3 years, or whether they would “lie fallow” for the foreseeable future.

Nonetheless, the SO Petition somehow guesstimates the projected demand for the new codes by assuming that “all CLECs, all ILECs and 50% of the cellular carriers need a thousands-block in each rate center in which they operate...” and thus two overlay codes are necessary.¹⁰ Although it is theoretically possible that the CPUC’s estimate will prove to be accurate, there is simply no reason to believe that it bears any resemblance to reality. Moreover, the estimate completely disregards the possibility that paging carriers would need new numbers which they

⁸ See Memorandum from H. Mickiewicz and S. Yun to the Commission dated September 30, 2003 re Specialized Overlay at 5. The Joint Paging Commenters note that at its meeting held on November 13, 2003, the CPUC ordered the implementation of an area code split in the 909 NPA. No such relief has yet been provided to the 310 NPA and, in fact, three of the five CPUC Commissioners have recently decided – despite all the evidence to the contrary - that no such relief is warranted at this time. (See CPUC D. 03-010-60 dated October 16, 2003.)

⁹ SO Petition at 3.

would be required to take in full codes, and not thousand blocks. The Commission surely requires more information from the CPUC if it were even tempted to consider the “novel” approach to number management suggested by the SO Petition.

3. The SO Petition Does Not Adequately Address the FCC Criteria for Specialized Overlays

The FCC was clearly aware of the potential burdens a SO could impose on consumers and carriers when it concluded that it would consider requests by state commissions for delegated authority to implement SOs only on a case-by-case basis. Accordingly, it established eight criteria that state commissions should address when requesting authority to implement an SO.¹¹ To that end, the FCC noted that “states seeking to implement an SO must also demonstrate that the benefits will outweigh the costs of implementing the SO” by addressing these factors.¹² The SO Petition, however, does not adequately address those criteria or otherwise demonstrate what benefits, if any, would result from the implementation of the SO in the context of the paging industry. For example:

Technologies and Service. There is no rationale or justification offered for selecting the particular technologies to be included in the SOs (*i.e.*, paging services, voice over internet protocol (“VoIP”) and dial-up Internet service provider (“ISP”)), and there is no obvious relationship between them.¹³ In addition, to subject the paging industry to the SO would be to expose it to all of the competitive disadvantages previously identified by the Commission when it rejected Ameritech’s proposed technology specific overlay (that would have placed both

¹⁰ *Id.* at 5 and exhibit attached thereto.

¹¹ *See* Third Report and Order at ¶¶ 80-94 (2001).

¹² *Id.* at ¶ 80.

¹³ The Joint Paging Commenters express no opinion on the CPUC’s characterization of On-star, E-fax, ATMs etc. as “transparent” or “non-geographic” based numbers except to note that the characterization certainly does not apply to paging services.

cellular and paging in the overlay).¹⁴

Moreover, the Joint Paging Commenters note that the paging industry was explicitly excluded from the CPUC's earlier petition to implement more geographically focused and technologically broader SOs in the 310 and 909 NPAs.¹⁵ It is difficult to understand how it now makes sense to impose these burdens on the industry, and the CPUC provides no analysis to support its change of position.¹⁶

Geographic Scope. Although the concept of an SO that would cover half of the state is superficially attractive, it is unclear how such a plan could provide any type of meaningful relief to the underlying NPAs when numbers from the two SOs would have to be distributed over approximately 738 rate centers. Moreover, the costs of provisioning the necessary facilities, including separate facilities for 911 services, would be extraordinary. Finally, from a purely practical vantage point, such an SO could theoretically be exhausted very quickly if a new paging carrier launched service on a state-wide basis since, as a non-pooling carrier, it would need to obtain full *codes* in every rate center where it offered service.

¹⁴ See *Proposed 708 Relief Plan and 630 Numbering Plan Area code by Ameritech-Illinois, Declaratory Ruling and Order*, 10 FCC Rcd 4596, 4607-12 ¶¶ 25-29, 33-35 (1996); see also *Numbering Resource Optimization*, Second Report and Order, Order on Reconsideration in CC Docket No. 96-98 and in CC Docket No. 99-200, and second Further Notice of Proposed Rulemaking in CC Docket No. 99-200, 16 FCC Rcd 306 (2000).

¹⁵ See Initial CPUC Petition at 3 (“... the CPUC proposed to move the existing NXX codes held by all wireless carriers except for paging companies, from the 310 and 909 numbering plans areas (NPAs) to the SO.”) (emphasis in original).

¹⁶ The CPUC acknowledges that there are numerous “technical details” which still would need to be worked out even if its petition were granted. See SO Petition at 3. The SO Petition, however, then states that based on its meeting with carrier representatives, it believes it “can work with the carriers to resolve implementation issues as they develop.” *Id.* at 4. The SO Petition fails to mention that at its meetings with the carrier representatives, the CPUC could not explain how the SO would provide any relief to the state, did not have any data to support the viability of its proposal and was uniformly told by all representatives that the proposal was both legally and operationally unworkable.

Transitional SOs. The SO Petition is essentially a hybrid proposal that attempts to include technology specific (*e.g.*, paging and VoIP) and non-geographic (*e.g.*, ATMs) numbers. Although the Commission's preference for permanent SOs in the case of the latter is clear, the Commission was equally clear that it has a similar preference for transitional SOs in the case of technology specific overlays.¹⁷ Nonetheless, the SO Petition proposes a permanent SO without any consideration for the ramifications on the affected industries (like paging) or the Commission's preference for a transitional overlay when certain technologies would otherwise be forced to participate in the new SO.

Take Backs. Although the SO Petition seems to imply that it seeks permission to "take back" only the "transparent" or "non-geographic" based numbers, it does not clearly define what numbers would be included in that subset. To the extent that the CPUC seeks to take back numbers from paging carriers, the petition must be rejected. As the Commission has recognized, such a proposal would impose significant costs on both consumers and carriers and could, in effect, devastate the only remaining low-cost telecommunications alternative available to members of the public safety and medical professions, as well as general consumers, in the State of California.

Due to the burdens take-backs impose on industry and consumers, the Commission "does not favor take-backs as a matter of policy," and "would likely oppose technology-specific overlays that would include take-backs of numbers that are geographically sensitive."¹⁸ In order to obtain the Commission's consent to such an extraordinary measure, the CPUC was required to

¹⁷ Third Report and Order at ¶¶ 74 ("we are extremely reluctant to consider permanent technology-specific overlays because of the likelihood that numbering resources in the technology specific overlay would lie fallow.") and 84.

¹⁸ *Id.* at ¶ 90.

make “a strong showing” that “specifically demonstrate[s]” how the benefits of the proposed SO and take-back outweigh the costs that would be imposed on carriers and consumers.¹⁹ The CPUC has not even attempted such a showing here. Moreover, from a purely pragmatic vantage point, paging carriers alone would exhaust the new SOs if they were forced to obtain new codes to replace those currently held by their customers. Thus, the SOs would be of no value whatsoever.

Ten-Digit Dialing. The CPUC’s proposed *permanent* waiver of the mandatory ten-digit dialing requirement would be particularly anticompetitive and discriminatory. For example, essentially every call placed to a paging customer would now require consumers to dial 10 digits since the calling party’s number (in almost all instances a landline or cellular number) would be in one of the underlying 25 NPAs while the paging customer’s number would be in the SO. No other telecommunications customers would be similarly situated or similarly disadvantaged.²⁰ The FCC’s mandatory ten-digit dialing requirement was explicitly designed to avoid just that type of result.²¹

Moreover, there is no apparent advantage to such a permanent waiver in terms of number resource optimization and it is unclear if the current state of the law would allow for a *permanent* waiver of the 10-digit requirement without further proceedings at the Commission.²²

¹⁹ *Id.*

²⁰ The Joint Paging Commenters note, as the FCC has long-recognized, that unless and until the current ILEC-imposed rate center design is reformed, consumers and carriers will continue to face numbering issues on a regular basis. (*See e.g.*, Allied’s Comments on Rate Center Consolidation filed at the CPUC on September 27, 1999 in R. 95-04-043, I. 95-04-044.)

²¹ Third Report and Order at 293, ¶ 92 (mandatory ten-digit dialing “maximize[s] numbering resource optimization” and “minimizes anti-competitive effects due to dialing disparities, which, in turn avoids customer confusion.”)

²² *See* 47 CFR 52.19(c)(3)(ii); *see also* New York & Public Serv. Com’n of NY. v. Federal Communications Commission, 267 F.3d 91(2d Cir. 2001) (confirming FCC’s authority to require ten-digit dialing when overlays are implemented).

4. The SO Petition Could Potentially Devastate the Paging Industry's Ability to Provide Low-Cost Telecommunications Services to Consumers and Public Safety Personnel in the State of California

As recognized throughout the telecommunications industry, the paging industry still faces serious challenges. Almost all of the national paging carriers over the past 10 years (including PageNet, Arch Communications, TSR Wireless LLC, Mobilemedia Communication, Weblink Wireless and Metrocall) have filed for bankruptcy protection (although some have been able to successfully reorganize). The total number of paging subscribers has dramatically declined in the last four months, the capital markets have been less than enthusiastic about the industry, and the primary infrastructure providers (Glenayre and Motorola) have essentially abandoned the field.

Nonetheless, the paging industry is prepared to face these challenges. Numerous carriers – national, regional and local - remain dedicated to providing their end users with low-cost, highly reliable paging services (as well as new services such as wireless access to the Internet). Paging, in fact, still remains the technology of choice among our nation's first responders and health and safety personnel. New manufacturers have arisen to fill the void created by Glenayre and Motorola and carriers have formed new national organizations to represent the industry and the vital services it provides. However, the industry simply cannot absorb (nor should it be required to absorb under any circumstances) the type of discriminatory obligations that would be imposed by the SO Petition.

As discussed above, the SO Petition would, among other things:

- Isolate the paging industry from other telecommunications carriers;
- Require essentially all calls to paging consumers to become 10-digit calls;

- Confuse paging consumers as they attempt to understand the toll implications of an overlay which extends over half of the state yet still relies on numbers rated to local rate centers; and
- Stifle competition to the extent new paging carriers try to enter the California market or existing carriers expand their current customer bases.

Moreover, as explicitly recognized in the SO Petition, the fact that paging/messaging carriers are not LNP capable, and thus do not participate in number pooling, calls into question what, if any, benefits their inclusion in the SOs would provide to the public with respect to numbering resources.²³

In contrast, the costs to the general consumer of such a proposal are likely to be substantial in terms of dollars, dialing disparities, customer confusion and customer inconvenience. The imposition of these costs on the “first responders” (*e.g.*, law enforcement agencies, hospitals and other entities responsible for the public health and safety) and consumers who are otherwise looking for affordable and reliable wireless telecommunications service, many of whom are served by the paging industry, is particularly unjustified in the face of this SO Petition.

²³ SO Petition at 3, fn. 5. Although the CPUC acknowledges that the cost benefit of including paging in the SO requires “further investigation”, the Joint Paging Commenters submit that such analysis should be completed before a petition is filed and not after the Commission has delegated its authority to a state commission.

III. CONCLUSION

For the reasons set forth above, the Joint Paging Commenters respectfully request the SO Petition be denied in its entirety, or in the alternative, that it be denied at least as to the extent it includes paging/messaging carriers.

Respectfully submitted this 17th day of November 2003.

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